

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1500
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF CIVIL COMPLAINT FILING

Original Filing Supplemental Filing Corrected Filing

Please print or type required information

PARTIES TO THE ACTION	PLAINTIFF(S) Jennifer Fishman												
	DEFENDANT(S) Republic Tobacco, L.P.												
CASE INFO	COURT DOCKET NUMBER 37-2019-00002496-CU-MC-CTL	COURT NAME Superior Court of California, County of San Diego											
	SHORT CASE NAME Fishman vs Republic Tobacco LP												
REPORT INFO	TYPE OF CLAIM (Check All That Apply) <table style="width:100%; border:none;"> <tr> <td><input type="checkbox"/> Proposition 65 Unlawful Discharge</td> <td><input checked="" type="checkbox"/> Warning</td> </tr> <tr> <td><input checked="" type="checkbox"/> Proposition 65 Failure to Warn</td> <td><input type="checkbox"/> Discharge Ban</td> </tr> <tr> <td><input type="checkbox"/> B&P Code section 17200</td> <td><input checked="" type="checkbox"/> Civil Penalty</td> </tr> <tr> <td><input type="checkbox"/> Other _____</td> <td></td> </tr> </table>	<input type="checkbox"/> Proposition 65 Unlawful Discharge	<input checked="" type="checkbox"/> Warning	<input checked="" type="checkbox"/> Proposition 65 Failure to Warn	<input type="checkbox"/> Discharge Ban	<input type="checkbox"/> B&P Code section 17200	<input checked="" type="checkbox"/> Civil Penalty	<input type="checkbox"/> Other _____		RELIEF SOUGHT (Check All That Apply) <table style="width:100%; border:none;"> <tr> <td><input checked="" type="checkbox"/> Warning</td> </tr> <tr> <td><input type="checkbox"/> Discharge Ban</td> </tr> <tr> <td><input checked="" type="checkbox"/> Civil Penalty</td> </tr> </table>	<input checked="" type="checkbox"/> Warning	<input type="checkbox"/> Discharge Ban	<input checked="" type="checkbox"/> Civil Penalty
	<input type="checkbox"/> Proposition 65 Unlawful Discharge	<input checked="" type="checkbox"/> Warning											
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<input checked="" type="checkbox"/> Civil Penalty													
COPY OF COMPLAINT MUST BE ATTACHED		For Internal Use Only											
FILER INFO	NAME OF CONTACT Jack Fitzgerald												
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FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the complaint to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.

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ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

01/15/2019 at 01:21:48 PM

Clerk of the Superior Court
By Richard Day, Deputy Clerk

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF SAN DIEGO**

18 JENNIFER FISHMAN,

19 Plaintiff,

20 v.

21 REPUBLIC TOBACCO, L.P.,

22 Defendant.

Case No.: 37-2019-00002496-CU-MC-CTL

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF FOR
VIOLATION OF PROPOSITION 65**

Cal. Health & Safety Code §§ 25249.5, *et seq.*

1 Plaintiff Jennifer Fishman, in the public interest, by and through her undersigned
2 counsel, hereby brings this action against Defendant Republic Tobacco, L.P. (“Republic”),
3 alleging the following based on personal knowledge, or where she lacks personal knowledge,
4 upon information and belief, including the investigation of her counsel.

5 **INTRODUCTION & FACTUAL ALLEGATIONS**

6 1. Plaintiff brings this representative action on behalf of all California citizens to
7 remedy Republic’s failure to warn California consumers that they are being exposed to carbon
8 monoxide (hereinafter, the “Listed Chemical”), a substance known to the State of California
9 to cause birth defects and other reproductive harm.

10 2. Such exposures have occurred and continue to occur through the use of
11 combustible paper products (sometimes called “rolling papers”) (the “Products”) that
12 Republic manufactures, distributes and/or sells in California. The burning and inhalation of
13 the Products exposes those using them to the Listed Chemical. The Products include the
14 following brands and their derivatives:

- 15 a. 4 Aces
- 16 b. Altesse
- 17 c. El Rev
- 18 d. e-z Wider
- 19 e. Gambler
- 20 f. High Card
- 21 g. JOB
- 22 h. Joker
- 23 i. Low Bob’s
- 24 j. McClintock
- 25 k. OCB
- 26 l. Premier
- 27 m. Rolling
- 28 n. Rollit
- o. Smoker Friendly
- p. TOP
- q. Tube Cut
- r. Ventura

1 meaning of California Health & Safety Code § 25249.11(a), and employs more than ten
2 people.

3 **JURISDICTION AND VENUE**

4 9. This Court has jurisdiction over this action pursuant to California Constitution
5 Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes
6 except those given by statute to other trial courts.” The statute under which this action is
7 brought does not specify any other basis for jurisdiction.

8 10. This Court has jurisdiction over Republic because Republic has sufficient
9 minimum contacts with California, or has otherwise intentionally availed itself of the
10 California market through the distribution and sale of the Products in the State of California.
11 Such purposeful availment has rendered the exercise of jurisdiction by California courts
12 consistent and permissible with traditional notions of fair play and substantial justice. This
13 Court also has jurisdiction in this matter because there is no federal question at issue, as the
14 issues herein are based solely on California statutes and law.

15 11. Venue in this action is proper in the San Diego Superior Court because Republic
16 has violated California law in the County of San Diego.

17 **CAUSE OF ACTION**

18 **VIOLATIONS OF PROPOSITION 65,**

19 **CALIFORNIA HEALTH AND SAFETY CODE §§ 25249.5 *ET SEQ.***

20 12. Plaintiff realleges and incorporates the preceding allegations as if fully set forth
21 herein.

22 13. The Citizens of California have expressly stated in the Safe Drinking Water and
23 Toxic Enforcement Act of 1986, Cal. Health & Safety Code §§ 25249.5, *et seq.*, that they
24 must be informed “about exposures to chemicals that cause cancer, birth defects and other
25 reproductive harm.” Cal. Health & Safety Code § 25249.6.

26 14. Republic, at all times relevant to this action, and continuing through the present,
27 has violated Cal. Health & Safety Code § 25249.6 by, in the course of doing business,
28 knowingly and intentionally exposing individuals who use the Products set forth in the Notice

1 to the Listed Chemical, without first providing a clear and reasonable warning to such
2 individuals pursuant to Cal. Health & Safety Code § 25249.6.

3 15. On or about October 10, 2018, Plaintiff sent a 60-day Notice and Certificate of
4 Merit to Republic, as well as the State Attorney General and additional district and city
5 attorney generals, pursuant to Cal. Health & Safety Code § 25249.7(a) & (d)(1) (the
6 “Notice”).

7 16. Republic has engaged in the manufacture, distribution, import, selling,
8 marketing or offering of the Products for sale or use in violation of Cal. Health & Safety Code
9 § 25249.6, and Republic’s manufacture, distribution, import, selling, marketing and offering
10 of the Products for sale or use in violation of Cal. Health & Safety Code § 25249.6 has
11 continued to occur beyond Republic’s receipt of Plaintiff’s Notice. Such violations are likely
12 to continue to occur in the future.

13 17. After receipt of Plaintiff’s Notice, the appropriate public enforcement agencies
14 have not commenced and diligently prosecuted a cause of action against Republic under
15 Proposition 65.

16 18. Republic knew or should have known that the Products manufactured,
17 distributed, imported, sold, marketed and offered in the State of California produces the
18 Listed Chemical through typical use, and exposes individuals to the Listed Chemical through
19 inhalation through typical use.

20 19. Typical and reasonably foreseeable use of the Products has caused and continues
21 to cause exposure to the Listed Chemical.

22 20. Republic knew that typical and reasonably foreseeable use of the Products would
23 expose individuals to the Listed Chemical and failed to provide a “clear and reasonable
24 warning” to those individuals.

25 21. Continuing commission by Republic of the acts alleged above have harmed and
26 will continue to irreparably harm the citizens of the State of California, for which harm they
27 have no plain, speedy, or adequate remedy at law.

1 22. By the above-described acts, Republic is liable, pursuant to Cal. Health & Safety
2 Code § 25249.7(b), for a civil penalty for each unlawful exposure to the Listed Chemical
3 from the Products.

4 23. Cal. Health & Safety Code § 25249.7(b) also specifically authorizes the Court
5 to grant injunctive relief against Republic as a consequence of the above-described acts.

6 **PRAYER FOR RELIEF**

7 24. Wherefore, Plaintiff accordingly prays for the following relief:

8 a. An assessment of civil penalties pursuant to Cal. Health & Safety Code §
9 25249.7(b), against Republic for the violations alleged herein;

10 b. A permanent injunction, pursuant to Cal. Health & Safety Code §
11 25249.7(b), enjoining Republic from distributing or selling the Products in California
12 without first providing a clear and reasonable warning, pursuant to Proposition 65, that
13 the users of the Products are exposed to the Listed Chemical;

14 c. An award to Plaintiff of her reasonable attorney's fees and costs of suit;

15 d. Such other and further relief as may be just and proper.

16 Dated: January 15, 2019

/s/ Jack Fitzgerald

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